BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER RULING DECISION NO. 149 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE

In the Matter of:

SHERATON VILLA MOTOR INN
(Employer-Appellant)

PRECEDENT
RULING DECISION
No. P-R-343

FORMERLY
RULING DECISION
NO. 149

Employer Account No.

Claimant: Frank R. Steurer
S.S.A. No.:
BYB: 02094 SD: 07023

The employer appealed from Referee's Decision No. S-R-14862 which held that the employer's reserve account is subject to charges of six times the claimant's weekly benefit amount of $41, or a total of $246, under section 1030.5 of the Unemployment Insurance Code. Written argument was submitted on behalf of the employer.

STATEMENT OF FACTS

The claimant was employed by the employer as a cashier from December 28, 1962 until July 2, 1963 at a terminating wage of $350 a month.

Effective February 9, 1964, the claimant filed a claim for unemployment insurance benefits in Reno, Nevada, against California as the liable state. As a base period employer, the employer received the department's form DE 1545, Notice of Claim Filed and Computation of Benefit Amounts. Timely response was made to this notice, stating in part:

> "Claimant was employed as front office cashier at a salary of $350.00 per month from December 28, 1962 until May 31, 1963 when he voluntarily quit his job, giving as the reason for leaving, 'To return to Reno.'"

The claimant informed the Department of Employment that the employment relationship continued through the month of June and until July 2, 1963 when he was laid off for lack of work. The claimant stated that during the month of June, he worked only six days. He was called to work when he was needed. The claimant also stated that he may have mentioned Reno or the general manager may have assumed that the claimant was returning to Reno where he had previously worked. However, at the time the employment relationship was terminated, the claimant had not decided what he would do. Because of the claimant's comments, the department asked the employer for further information. The employer promptly replied that the facts submitted in the first letter were correct, but "we now find that claimant did work six days in June and was laid off as he has stated."

Based on all of this information, the department issued a notice of unfavorable ruling to the employer. The department also issued form DE 3802, Notice of Potential Charge to Reserve Account.

In reply to the notice of potential charge, the employer's representative stated:

> "We protest a charge in this connection. Information submitted was completed by Mr. Wendell Ek, formerly General Manager, and no longer connected with the firm and not available for information or evidence. Upon the request of the Department your letter, dated April 9, 1964, a further investigation was made by personnel currently employed and the facts of a lay off and amount of work were submitted in return. No effort was indicated of intent to deceive or willfully falsify the records, only an error common to the handling of claims, by all of us engaged in this complicated business of Unemployment Insurance.
>
> "We believe this falls short of a violation of Code Section 1030.5, which requires a deliberate, premeditated willful violation of the law for the purpose of defrauding the claimant of benefits rightfully due."

The department then issued the Notice of Determination on Charge to Reserve Account, charging the employer's reserve account with six times the claimant's weekly benefit amount of $41, or a total of $246.

The employer's representative testified that upon receipt of the letter from the department dated April 9, 1964, an employee who was not connected with the employer at the time the claimant was employed made an investigation by examining payroll records and discussing the matter with older employees. This employee was able to confirm that the claimant's statements were correct as to wages paid, days worked, and that he was laid off for lack of work.

The employer contends that, although the information submitted in response to the notice of claim was erroneous, its reserve account should not be charged under section 1030.5 of the code because it submitted corrected information as soon as this error was drawn to its attention and prior to any determination or ruling.

REASONS FOR DECISION

Section 1030.5 of the Unemployment Insurance Code provides as follows:

> "1030.5. If the director finds that any employer or any employee, officer, or agent of any employer, in submitting facts pursuant to Section 1030 or 3701, willfully makes a false statement or representation or willfully fails to report a material fact concerning the termination of a claimant's employment, the director shall make a determination thereon charging the employer's reserve account not less than 2 nor more than 10 times the weekly benefit amount of such claimant. The director shall give notice to the employer of a determination under this section. Appeals may be taken from said determinations in the same manner as appeals from determinations on benefit claims."

In Ruling Decision No. 141 [now Appeals Board Decision No. P-R-338], the employer, in response to a notice of claim filed through the simple error of its bookkeeper, confused the claimant with another employee who left on the same day and submitted erroneous information. We held that submitting erroneous information under such circumstances did not show willfulness within the meaning of section 1030.5 of the code. However, thereafter, the agent of the employer was notified that the information was incorrect and took no action to investigate and submit the correct information. We held that this series of acts and omissions amounted to a willful false representation and willful withholding of material facts.

In Ruling Decision No. 146, a similar inadvertent error took place in transcribing the reasons for the claimant's termination of employment. This information was submitted to the department initially but corrected information was thereafter sent to the department prior to the issuance of a determination and ruling, and prior to any inquiry having been made of the employer. We held there was no willful misstatement.

On the other hand, in Ruling Decision No. 142 [now Appeals Board Decision No. P-R-339], an intentional false statement was put in the employer's records by the claimant's supervisor. We made no finding as to whether any attempt was made to rectify this submission of incorrect information and did not discuss whether such an attempt would be considered to be significant. Similarly, in Ruling Decision No. 143, the employer submitted incorrect information to the department. No attempt was made to correct that information in response to a notice. In both cases we held the employers' accounts subject to charges under section 1030.5.

In the present case, the information originally submitted to the department by the employer's agent was clearly erroneous. The information was based upon a report prepared by the employer's former general manager. Since the manager did not appear and testify in this proceeding, we have no indication as to what information was in his possession at the time he prepared the report. However, it is clear from the evidence that payroll records and other information were available to the employer but were not investigated by the employer until after receipt of the department's letter dated April 9, 1964. We must conclude that had the employer searched those records, it would have discovered that the claimant was employed subsequent to May 31, 1963, and that he was laid off for lack of work. Whether or not the manager had actual knowledge of these facts, it was the obligation of the employer to see to it that all of the facts in its possession were submitted to the department so that the department could perform its statutory duty (Ruling Decision No. 145) [now Appeals Board Decision No. P-R-340]. We therefore conclude that the employer willfully made a false statement concerning the termination of the claimant's employment. This false information was not the result of mere inadvertence as was the situation in Ruling Decisions Nos. 141 [now Appeals Board Decision No. P-R-338] and 146. Under these circumstances, we hold that it is immaterial, except possibly in determining the penalty to be assessed, that the employer did subsequently correct the false information submitted. However, because the employer did make reasonable

efforts to correct the situation, it was appropriate that the department did not assess the maximum penalty of ten times the claimant's weekly benefit.

DECISION

The decision of the referee is affirmed. The employer's reserve account is subject to charges of six times the claimant's weekly benefit amount under section 1030.5 of the code.

Sacramento, California, December 31, 1964.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

GERALD F. MAHER, Chairman

LOWELL NELSON

NORMAN J. GATZERT

Pursuant to section 409 of the Unemployment Insurance Code, the above Ruling Decision No. 149 is hereby designated as Precedent Decision No. P-R-343.

Sacramento, California, May 3, 1977.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

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